

On March 24, 2004 appellant, then a 57-year-old claims examiner, filed an occupational disease claim (Form CA-2), for cervical radiculopathy and bilateral cubital and carpal tunnel syndromes sustained on or before October 21, 2002. He attributed these conditions to using a

computer and automated imaging system at work for eight hours a day, five days a week. On September 13, 2003 appellant was in a nonoccupational motor vehicle accident and sustained a cervical vertebral fracture and cervical and lumbar disc herniations. He returned to work part time in October 2003, stopped work on February 2, 2004 and did not return.

In an April 7, 2004 letter, the Office advised appellant of the additional evidence needed to establish his claim. The Office requested a complete description of causative work factors and rationalized medical opinion from his physician explaining the causal relationship between those factors and the claimed conditions.

Appellant submitted chart notes from Dr. Bruce Steinberg, an attending Board-certified orthopedic surgeon, from October 21 to November 18, 2002. Dr. Steinberg noted his complaints of numbness and tingling in both hands and wrists. He diagnosed bilateral carpal tunnel syndrome, early bilateral cubital tunnel syndrome, “[p]ossible radiculopathy secondary to nerve root impingement” and right shoulder bursitis.

In a January 27, 2003 report, Dr. Michael S. Scharf, an attending Board-certified orthopedic surgeon, noted appellant’s history of bilateral hand and wrist paresthesias. He stated that appellant worked “as a claim examiner and work[ed] on a computer a lot.” Dr. Scharf noted that magnetic resonance imaging scans showing multilevel disc degeneration in the cervical spine with foraminal stenosis at C4-5. He diagnosed cervical spondylosis and prescribed home traction.

In a February 18, 2004 report, Dr. M.W. Kilgore, an attending Board-certified psychiatrist and neurologist, noted treating appellant for injuries sustained in the September 13, 2003 motor vehicle accident. He noted herniated discs at C3-4 and C4-5, herniated lumbar discs and a C5-6 endplate fracture. Dr. Kilgore opined that the accident caused chronic neck and back pain, disabling appellant from work.¹

In a March 24, 2004 letter, Debra Harvey, appellant’s supervisor, stated that appellant did not complain of neck or upper extremity symptoms until after the September 13, 2003 nonoccupational motor vehicle accident.

By decision dated May 26, 2004, the Office denied appellant’s claim on the grounds that he failed to substantiate the alleged work factors as factual. The Office further found that he

¹ Appellant submitted diagnostic test results. January 16, 2002 cervical x-rays showed degenerative changes from C4 through 7. A January 22, 2002 cervical MRI scan showed degenerative changes at C4-6 and a posterior spur at C5-6. A January 29, 2002 electromyogram (EMG) of the upper extremities was “suggestive of bilateral mild chronic C5-6 poly-radiculopathy” without evidence of entrapment neuropathy. Appellant also submitted a February 19, 2004 report from Dr. David E. Kemp, a chiropractor. As Dr. Kemp did not diagnose a spinal subluxation by x-ray, he is not considered a physician for the purposes of this case and his opinion carries no medical weight. Section 8101(2) of the Federal Employees’ Compensation Act defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by stated law. Section 8101(3) of the Act, which defines services and supplies, limits reimbursable chiropractic services to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary. 5 U.S.C. § 8101(3). See *Thomas W. Stevens*, 50 ECAB 288 (1999); *George E. Williams*, 44 ECAB 530 (1993).

submitted insufficient rationalized medical evidence supporting a causal relationship between work factors and the claimed conditions.

Appellant requested an oral hearing, held on January 25, 2005. He submitted an August 7, 2004 letter from a coworker confirming his use of a computerized imaging system at work for several hours a day over a period of years. Appellant also submitted a February 21, 2005 report from Dr. Michelle Aquino-Caballero, an attending Board-certified internist, opining that there “definitely [was] a relationship” between appellant’s bilateral carpal tunnel syndrome and using a computer at work.

By decision dated April 5, 2005, the Office hearing representative set aside the May 26, 2004 decision. He found that appellant established using a computer at work from 2000 to 2004. The hearing representative further found that the medical evidence was sufficient to require additional development and remanded the case for referral to a second opinion examiner.

On April 29, 2005 the Office referred appellant to Dr. Steven Lancaster, a Board-certified orthopedic surgeon, for a second opinion examination. A statement of accepted facts and the medical record were provided for his review. Dr. Lancaster submitted a May 18, 2005 report noting that appellant’s claim had been accepted for cervical radiculopathy, bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. On examination, he observed bilaterally positive Tinel’s and Phalen’s signs. Dr. Lancaster noted a September 2003 motor vehicle accident in which appellant sustained an unspecified fracture of the cervical spine.

The Office requested that Dr. Lancaster submit a supplemental report clarifying his opinion on causal relationship. Dr. Lancaster submitted an August 5, 2005 supplemental report opining that appellant could have a compression neuropathy even though a July 12, 2005 EMG of both upper extremities was normal.

The Office determined that Dr. Lancaster’s supplemental report was not responsive to the questions posed and that his opinion was defective as it was not based on the medical record. On August 25, 2005 the Office referred appellant to Dr. D. Barry Lotman, a Board-certified orthopedic surgeon, for a second opinion examination. A statement of accepted facts was provided for his review. In a September 27, 2005 report, Dr. Lotman noted reviewing the statement of accepted facts, but that “no other medical records [were] submitted for [his] review.” On examination, Dr. Lotman found a mildly limited range of cervical motion, a positive Tinel’s sign in the left wrist and a positive neurologic sign over Guyon’s canal in the right wrist. He also noted a nonanatomic loss of vibratory sense in the upper extremities. Dr. Lotman diagnosed cervical spondylosis, possible bilateral carpal tunnel syndrome and symptom magnification. He opined that appellant’s “deskwork” aggravated the cervical spondylosis. Dr. Lotman noted that appellant’s cervical condition had returned to baseline following the September 2003 motor vehicle accident.

In an October 28, 2005 letter, Dr. Lotman advised that appellant brought no medical records to the second opinion examination. He noted reviewing the statement of accepted facts, Dr. Lancaster’s August 5, 2005 report, a July 2005 EMG report and unspecified medical records.

By decision dated November 3, 2005, the Office accepted an aggravation of cervical spondylosis but denied appellant's claim for cervical radiculopathy and bilateral carpal and cubital tunnel syndromes. The Office found that the medical evidence was insufficient to establish a causal relationship between work factors and the claimed wrist conditions or cervical radiculopathy. The Office accorded the weight of the medical opinion to Dr. Lotman,

Appellant requested a telephonic hearing, held on March 9, 2006. At the hearing, appellant contended that Dr. Lotman performed only a cursory physical examination and refused to review medical records he brought to the examination.

By decision dated and finalized May 30, 2006, the Office hearing representative affirmed the November 23, 2005 decision, finding that the medical record was insufficient to establish a causal relationship between work factors and the claimed cubital and carpal tunnel syndromes. He found that Dr. Lotman's opinion represented the weight of the medical evidence. The hearing representative noted Dr. Lotman's October 28, 2005 addendum stating that appellant did not bring any additional records with him to the examination.

LEGAL PRECEDENT

An employee seeking benefits under the Act² has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

ANALYSIS

Appellant alleged that he developed bilateral carpal tunnel syndrome, bilateral cubital tunnel syndrome and cervical radiculopathy as a result of using a computer and imaging system at work. The Office accepted the claim for an aggravation of cervical spondylosis but denied the other claimed conditions on the grounds that the medical evidence was insufficient to establish that they were causally related to his employment.

The Office accorded the weight of the medical evidence to Dr. Lotman, a Board-certified orthopedic surgeon and second opinion physician. In its May 30, 2006 decision, the Office found that Dr. Lotman's report was based on a complete and accurate medical history. However, the record demonstrates otherwise. In his September 27, 2005 report, Dr. Lotman stated that no medical records other than the statement of accepted facts were provided for his review. Appellant asserted that he brought some records with him to the examination but Dr. Lotman refused to review them. Dr. Lotman noted in an October 28, 2005 letter that he reviewed a July 2005 EMG report, Dr. Lancaster's August 5, 2005 report and other unspecified records. He denied that appellant brought these records to the examination. Dr. Lotman stated in his September 27, 2005 report that the Office did not provide him with the medical record. His reports are unclear as to whether he had all the medical evidence of record for his review. The Board has held that reports based on an incomplete or inaccurate medical history are of diminished probative value.⁶

The Board finds that Dr. Lotman's opinion requires clarification. On remand of the case, the Office should provide him with an updated statement of accepted facts and a complete copy of the medical record. The Office shall request that Dr. Lotman submit a comprehensive report, based on his clinical findings and the medical record, explaining any causal relationship between work factors and the claimed conditions of bilateral carpal tunnel syndrome, bilateral cubital tunnel syndrome and cervical radiculopathy. The Office shall then issue an appropriate decision in the case. Should Dr. Lotman not be available to provide such a report, the Office should develop the medical evidence as needed for a proper adjudication of the claim.

CONCLUSION

The Board finds that the case is not in posture for a decision. The case will be remanded for additional medical development.

⁵ *Solomon Polen*, 51 ECAB 341 (2000).

⁶ *See John W. Montoya*, 54 ECAB 306 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 30, 2006 and November 23, 2005 are set aside and the case remanded for further development consistent with this opinion.

Issued: March 7, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board